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Attorneys for Defendant, MICHAEL KAPLAN, M.D.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL STANLEY KAPLAN, MD,

Defendant.

CASE NO. 2:13-cr-377-GMN-CWH

MOTION TO WITHDRAW AS  
ATTORNEY OF RECORD AND TO  
CONTINUE SENTENCING (SECOND  
REQUEST)

**AND ORDER THEREON**

COME NOW Dominic P. Gentile, Esq., Vincent Savarese, III, Esq., and Paola M. Armeni, Esq. of the law firm of Gordon Silver, and pursuant to Local Rule IA 10-6, Nevada Rule of Professional Conduct ("NRPC") 1.16, and Rule 45-1 of the Local Rules of Criminal Practice, hereby move to withdraw as attorneys for Michael Stanley Kaplan, M.D. (hereinafter "Dr. Kaplan") and to continue the sentencing hearing currently scheduled for February 24, 2015 at 9:00 a.m. for a minimum of sixty (60) days.

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1 This Motion is made and based upon the points and authorities, the Declaration of  
2 Dominic P. Gentile attached hereto, the Declaration of Dr. Kaplan, attached hereto, and such  
3 argument and evidence as may be presented at the hearing on this Motion, should any occur.

4 DATED this 16<sup>th</sup> day of February, 2015.

5  
6 GORDON SILVER

7 By: /s/ Dominic P. Gentile  
8 DOMINIC P. GENTILE, ESQ.  
9 VINCENT SAVARESE III, ESQ. and  
10 PAOLA M. ARMENI, ESQ.  
11 3960 Howard Hughes Pkwy., 9th Floor  
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13 Tel: (702) 796-5555  
14 Fax: (702) 369-2666  
15 Attorneys for Defendant,  
16 MICHAEL STANLEY KAPLAN  
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**DECLARATION OF DOMINIC P. GENTILE IN SUPPORT OF MOTION TO  
WITHDRAW AS ATTORNEY OF RECORD AND TO CONTINUE SENTENCING**

I, Dominic P. Gentile, Esq., declare in support of this Motion to Withdraw as Attorney of Record, in the matter styled *United States of America vs. Michael Stanley Kaplan, M.D.*, Case No. 2:13-cr-377-GMN-CWH, filed in the United States District Court, District of Nevada:

1. I am an attorney duly licensed to practice before all Courts in the State of Nevada, am a partner in the law firm of Gordon Silver and I am one of the attorneys for Dr. Kaplan in the instant matter.

2. Dr. Kaplan's relationship with Gordon Silver has deteriorated due to a breakdown in the necessary trust and confidence aspect of the attorney-client relationship.

3. On February 9, 2015, Dr. Kaplan advised me as to his desire to replace me and the firm as his attorneys in this case, for non-economic or financial reasons and entirely based upon his trust and confidence in his current representation.

4. Although there is an outstanding account receivable from Dr. Kaplan to this firm, it has nothing to do with the breakdown in the relationship and in no manner contributes to the decision to withdraw from this case. Arrangements have been made between Dr. Kaplan and this firm for the payment of the outstanding balance due to the satisfaction of both the firm and Dr. Kaplan.

5. Gordon Silver's withdrawal will result in a delay of the scheduled sentencing hearing set for February 24, 2015 at 9:00 a.m.

6. Dr. Kaplan has retained new counsel, Dennis Riordan of San Francisco, California, to assist him at his sentencing. The new attorney will require additional time to properly review the case and prepare for sentencing.

7. Once the Motion to Withdraw is granted, it is anticipated that new counsel will be filing a notice of appearance on behalf of Dr. Kaplan.

8. With a continuance of the sentencing date, withdrawal can be accomplished without material adverse effect on the interests of Dr. Kaplan.

9. This is the second request to continue sentencing. The first request was via stipulation after the United States Probation Officer informed the parties that he needed additional time to complete the final Presentence Investigation Report.

10. Because of the discharge of Gordon Silver and the additional time needed for Dr. Kaplan's new counsel to prepare, good cause exists for Gordon Silver to withdraw and for the Court to continue the sentencing hearing.

11. On February 9, 2015, Paola M. Armeni, Esq., a shareholder of Gordon Silver and co-counsel for Dr. Kaplan, advised Assistant U.S. Attorney ("AUSA") Crane Pomerantz of the instant situation.

12. AUSA Pomerantz stated that the Government will not object to a continuance of the sentencing hearing.

13. Notice of Gordon Silver's Motion to Withdraw and to Continue Sentencing was served on both Dr. Kaplan and the U.S. Attorney's Office on February 16, 2015.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

Executed this 16<sup>th</sup> day of February, 2015.

/s/ Dominic P. Gentile  
DOMINIC P. GENTILE, ESQ.

# MEMORANDUM OF POINTS AND AUTHORITIES

## I.

### **THIS COURT SHOULD GRANT THE MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR DR. KAPLAN AND CONTINUE THE SENTENCING DATE**

Pursuant to LR IA 10-6(b) "[n]o attorney may withdraw after appearing in a case except by leave of court after notice served on the affected client and opposing counsel." Further, pursuant to subsection (e), "[e]xcept for good cause shown, no withdrawal or substitution shall be approved if delay of discovery, the trial or any hearing in the case would result. Where delay would result, the papers seeking leave of Court for the withdrawal or substitution must request

specific relief from the scheduled trial or hearing.” “Every motion or stipulation to extend time shall inform the Court of any previous extensions granted and state the reasons for the extension requested.” LR of Criminal Practice 45-1.

As set forth in the Declaration of Dominic P. Gentile, notice of Gordon Silver’s Motion to Withdraw and to Continue Sentencing was served on Dr. Kaplan and the U.S. Attorney’s Office on February 16, 2015. Gordon Silver has good cause to withdraw as counsel under the Nevada Rules of Professional Conduct (“NRPC”) 1.16, which provides, in pertinent part, a lawyer may withdraw from representation where:

- (1) Withdrawal can be accomplished without material adverse effect on the interests of the client; or
- (7) Other good cause exists for withdrawal.

*See* NRPC 1.16(b).

Here, as determined in the Gentile Declaration, Gordon Silver’s further representation of Dr. Kaplan has been made untenable by the breakdown in Dr. Kaplan’s trust and confidence in the firm representing him going forward. Moreover, Dr. Kaplan’s discharge of Gordon Silver constitutes good cause for withdrawal. *See* Declaration of Dr. Kaplan, attached hereto as **Exhibit A**.

Since the withdrawal will affect the current sentencing date, Dr. Kaplan is requesting specific relief of the current sentencing date and is requesting that sentencing be continued for a minimum of sixty (60) days to allow new retained counsel to get up to adequately prepare for the sentencing. The Government has no opposition to this request. *See* Declaration of Dominic P. Gentile.

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III.

CONCLUSION

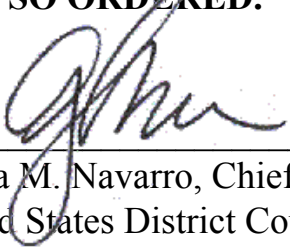
It is respectfully requested that is Court enter an order granting Gordon Silver's Motion to Withdraw as Attorneys for Defendant, Dr. Michael S. Kaplan, as well as vacate the current sentencing date of February 24, 2015 and continue the sentencing at least sixty (60) days.

DATED this 16<sup>th</sup> day of February, 2015.

GORDON SILVER

/s/ Dominic P. Gentile  
DOMINIC P. GENTILE, ESQ.  
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Attorneys for Defendant,  
MICHAEL STANLEY KAPLAN

**IT IS SO ORDERED.**

  
Gloria M. Navarro, Chief Judge  
United States District Court

**DATED: 02/20/2015**

CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of February, 2015, I electronically filed the foregoing document with the United States District Court, District of Nevada by using the CM/ECF filing system. I certify that the following parties or their counsel are registered as ECF filers and that they will be serviced by the CM/ECF system:

Crane M Pomerantz [crane.pomerantz@usdoj.gov](mailto:crane.pomerantz@usdoj.gov); [pamela.j.mrenak@usdoj.gov](mailto:pamela.j.mrenak@usdoj.gov) and

Peter James Leininger [peter.leininger@fda.hhs.gov](mailto:peter.leininger@fda.hhs.gov)



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An employee of GORDON SILVER

# EXHIBIT A

# EXHIBIT A



GORDON SILVER  
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 Attorneys for Defendant, MICHAEL KAPLAN, M.D.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL STANLEY KAPLAN, MD,

Defendant.

CASE NO. 2:13-cr-377- GMN-CWH

DECLARATION OF MICHAEL  
 STANLEY KAPLAN, M.D. IN SUPPORT  
 OF MOTION TO WITHDRAW AS  
 ATTORNEY OF RECORD AND TO  
 CONTINUE SENTENCING (SECOND  
 REQUEST)

I, Michael S. Kaplan, M.D., make this declaration as provided in support of the Motion to Withdraw as Attorney of Record and to Continue Sentencing.

1. I am the Defendant in the above-titled case. As such, I am competent to testify regarding the following facts, as I have personal knowledge and/or have been provided information such that I believe the facts to be true.

2. On February 9, 2015, due to a breakdown in communication, I discharged Gordon Silver of their legal services. Therefore, I consent to Gordon Silver withdrawing as my attorneys of record.

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3. I have already retained new counsel and as such am requesting that the Court continue my sentencing date at the minimum by sixty (60) days so as to allow my new attorney sufficient time to fully review my case and prepare for sentencing.

I declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct.

Executed this 11th day of February, 2015.

Michael S Kaplan  
MICHAEL S. KAPLAN, M.D.  
DECLARANT